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SEP 12 2005

In re Application of :
Schneider : DECISION ON PETITION
Application No. 10/700,623 :
Filed: November 5, 2003 :
Docket No.: 3438-64-1 :

OFFICE OF PETITIONS

This is a decision on the petition under 37 CFR 1.137(a) and request to withdraw the holding of abandonment, filed August 8, 2005. This matter is being jointly addressed as a petition to withdraw the holding of abandonment under 37 CFR 1.181 as well as a petition with revive under 37 CFR 1.137(a).

This application was held abandoned January 29, 2005 for failure to timely reply to the Office communication mailed December 28, 2004. The Office communication set a 30 day or one month, whichever is longer, period of time for reply. No extensions of time in accordance with 37 CFR 1.136 were timely requested. Notice of Abandonment was mailed February 12, 2005.

DECISION UNDER 37 CFR 1.181

Petitioner asserts non-receipt of the Office communication mailed December 28, 2004.

In the absence of any irregularity in the mailing of the Office communication, there is a strong presumption that the Office communication was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Office communication was not in fact received. The showing required to establish non-receipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See, MPEP 711.03(c). The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail.

Office records indicate the Office communication was properly mailed to the practitioner of record at the correspondence address of record at the time of mailing. Thus, there was no irregularity in mailing the Office communication on the part of the United States Patent and Trademark Office.

In support of the petition, petitioner has provided a copy of the docket record where the Office communication would have been entered had it been received along with a statement from practitioner that a search of the docket record and file jacket indicated that the Office communication was not received.

In view of the evidence submitted, the petition to withdraw the holding of abandonment is hereby **GRANTED**.

The Notice of Abandonment is hereby **VACATED** and the holding of abandonment is **WITHDRAWN**.

DECISION UNDER 37 CFR 1.137(a)


A grantable petition under 37 CFR 1.137(a) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(1); (3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c).

In view of the withdrawal of abandonment, the petition to revive under 37 CFR 1.137(a) is hereby **DISMISSED AS MOOT**.

Petitioner is entitled to a refund of the previously submitted \$250.00 petition fee and may request a refund by writing to the Finance Office, Refund Branch. A copy of this decision should accompany any request for refund.

The application file is being forwarded to Technology Center 1700 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3205.


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Office of Petitions